

NOT FOR PUBLICATION — For upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Crim. No. 2000-272
	)	
LUTHER THOMAS,	)	
	)	
Defendant.	)	
	)	

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**ATTORNEYS:**

**Joycelyn Hewlett, Esq.**  
**Assistant U.S. Attorney**  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Douglas J. Beevers, Esq.**  
**Assistant Federal Public Defender**  
St. Thomas, U.S.V.I.  
*For the defendant.*

**MEMORANDUM**

Moore, J.

This matter is before the Court on the defendant's motion for reconsideration of the Court's order dated October 12, 2000, denying his Rule 41(e) request for the return of \$1,049.00 in cash. The premises considered, the Court will deny the defendant's motion for reconsideration.

The defendant was arrested on May 25, 2000 on charges of possession with intent to distribute a controlled substance. On that same date, the Drug Enforcement Administration ["DEA"], seized \$1,049.00 from the defendant's residence and promptly

instituted administrative civil forfeiture proceedings pursuant to 19 U.S.C. § 1609. On June 19, 2000, written notice of the seizure was sent by certified mail, return receipt requested, to the defendant, listed as Prisoner ID No. 05583-094 at Anna's Hope Detention Facility, St. Croix, Virgin Islands. Delivery was accepted at that address on July 5, 2000.

The defendant did not file a claim and post bond with the DEA within the time period allowed, subjecting the property to administrative forfeiture. See 19 U.S.C. § 1608. On August 25, 2000, the DEA sent another notice by certified mail to defense counsel, allowing the defendant an additional twenty days to file a claim and post bond. He did not do so, but instead filed a motion in this Court on September 21, 2000 for return of property pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure. In the motion, the defendant failed to mention the forfeiture proceedings then pending before the DEA, although a copy of the motion was served on the responsible agent within the DEA. The United States responded to the motion by asserting that the property had evidentiary value in the criminal proceedings then pending against the defendant. On October 12, 2000, Magistrate Judge Geoffrey Barnard denied the defendant's motion.

On October 31, 2000, the defendant was acquitted of all criminal charges. On November 22, 2000, he filed a motion to

reconsider the Magistrate Judge's October 12th Order denying the return of property. The defendant having failed to timely file a claim with the DEA, the money was administratively forfeited on December 7, 2000. On January 31, 2001, the Magistrate Judge ordered the money returned to the DEA. Despite the completion of the administrative forfeiture proceedings, the defendant still presses before this Court his request for return of the property under Rule 41(e), adding in his most recent filing an allegation of inadequate notice.

Although this Court has no jurisdiction to resolve the issue of the return of property under 41(e) once the government has initiated administrative forfeiture proceedings and the property is no longer the subject of an ongoing criminal proceeding, it has jurisdiction to review an administrative forfeiture when a person claims that he or she received inadequate notice of completed forfeiture proceedings. See *United States v. McGlory*, 202 F.3d 664, 670 (3d Cir. 2000).

In *McGlory*, the Court of Appeals held that in order to satisfy due process requirements, "notice of a pending forfeiture proceeding must be mailed to the detainee at his place of confinement." *Id.* at 674. Here, notice was mailed directly to the defendant at the Anna's Hope facility, and the defendant does not assert that the Anna's Hope facility was not his place of

confinement at the time the notice was accepted by officials there. Instead, he asserts that there is no proof that the notice was delivered into his very hands.

The defendant's argument has no merit. Evidence that the notice was mailed to the detainee at the place of his confinement is sufficient under *McGlory*, and the Court will not read that decision to require more. See *id.* at 673 ("Due process does not require an infallible method of giving notice."). Accordingly, the defendant's motion for reconsideration will be denied.

**ENTERED this 18th day of September, 2001.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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*For the plaintiff,*

**Douglas Beevers, Esq.**  
Assistant Federal Public Defender  
St. Thomas, U.S.V.I.  
*For the defendant.*

**ORDER**

For the reasons stated in the accompanying Memorandum of  
even date, it is hereby

**ORDERED** that the defendant's motion for reconsideration of  
its Order of October 12, 2000 is **DENIED**.

**ENTERED** this 18th day of September, 2001.

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

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**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

**Copies to:**

Honorable Geoffrey W. Barnard  
AUSA Joycelyn Hewlett  
AFPD Douglas J. Beevers  
Mrs. Jackson  
Jennifer N. Coffin, Esq.